

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

---

LINDA REGISTER,  
*Plaintiff/Appellant,*

*v.*

CHRISTOPHER G. HICKMAN,  
ARIZONA HOMESTORES LLC, DBA RE/MAX HOMESTORES,  
AND JILL A. AXE,  
*Defendants/Appellees.*

No. 2 CA-CV 2016-0042  
Filed August 8, 2016

---

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).*

---

Appeal from the Superior Court in Cochise County  
No. CV201500460  
The Honorable Charles Irwin, Judge

**AFFIRMED**

---

COUNSEL

Linda Register, Tucson  
*In Propria Persona*

Thomas Markson Rubin & Kelley PC, Phoenix  
By Neal B. Thomas  
*Counsel for Defendants/Appellees*

REGISTER v. HICKMAN  
Decision of the Court

---

**MEMORANDUM DECISION**

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

---

ECKERSTROM, Chief Judge:

¶1 Plaintiff/appellant Linda Register challenges the ruling in favor of defendants/appellees Christopher Hickman, Arizona Homestores, LLC, and Jill A. Axe (collectively “Hickman”) that granted defendants’ motion for judgment on the pleadings based on the statute of frauds. We affirm for the reasons that follow.

**Factual and Procedural Background**

¶2 On appeal from the order granting judgment on the pleadings, we accept as true all material allegations of Register’s complaint. *See Delci v. Gutierrez Trucking Co.*, 229 Ariz. 333, ¶ 6, 275 P.3d 632, 634 (App. 2012); *In re 15453 N. Second Ave.*, 185 Ariz. 35, 36 n.1, 912 P.2d 39, 40 n.1 (App. 1996). The present action arose from a real estate transaction between sellers and buyers who are not parties to this proceeding. Register is a licensed real estate broker who had an exclusive agreement to serve as the buyers’ broker. Hickman served as broker and agent for the sellers. At the conclusion of the sale, Hickman received a commission that he refused to share with Register, citing the lack of any written agreement requiring him to do so.

¶3 In 2015, Register filed a pro se complaint against Hickman in which she sought to collect a portion of the commission, among other damages. Her amended complaint asserted claims of breach of the duty of good faith and fair dealing, tortious interference with an economic advantage, and tortious interference with contractual business relations. In lieu of an answer, Hickman filed a motion for judgment on the pleadings pursuant to Rule 12(c), Ariz. R. Civ. P. In that motion, Hickman asserted that Register had failed to comply with the pertinent statute of frauds, A.R.S.

REGISTER v. HICKMAN  
Decision of the Court

§§ 44-101(7)<sup>1</sup> and 32-2151.02(A),<sup>2</sup> because she had no written agreement with him.

¶4 Register did not allege that she had such a written agreement. The trial court consequently determined her complaint

---

<sup>1</sup>Section 44-101 states:

No action shall be brought in any court in the following cases unless the promise or agreement upon which the action is brought, or some memorandum thereof, is in writing and signed by the party to be charged, or by some person by him thereunto lawfully authorized:

....

7. Upon an agreement authorizing or employing an agent or broker to purchase or sell real property, or mines, for compensation or a commission.

<sup>2</sup>Section 32-2151.02 provides:

A. All real estate employment agreements shall:

1. Be written in clear and unambiguous language.

2. Fully set forth all material terms, including the terms of broker compensation.

3. Have a definite duration or expiration date, showing dates of inception and expiration.

4. Be signed by all parties to the agreement.

REGISTER v. HICKMAN  
Decision of the Court

failed to state a claim on which relief could be granted. When the court granted the Rule 12(c) motion, it expressly stated that its ruling was based “solely on the pleadings.” In the final judgment that followed, the court awarded Hickman attorney fees and costs. We have jurisdiction over Register’s appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

**Discussion**

¶5 In granting the motion for judgment on the pleadings, the trial court expressly relied on this court’s opinion in *Young v. Rose*, 230 Ariz. 433, 286 P.3d 518 (App. 2012). In that case, a real estate agent filed an action for breach of contract, seeking to collect a commission. *Id.* ¶¶ 3, 8. The defendants moved to dismiss the action under Rule 12(b)(6) due to the lack of a properly signed agreement. *Young*, 230 Ariz. 433, ¶ 9, 286 P.3d at 520. We determined this deficiency made the agreement “unenforceable,” *id.* ¶ 1, and “render[ed] judicial relief unavailable for the recovery of a commission.” *Id.* ¶ 13, quoting *Realty Execs. v. Northrup, King & Co.*, 24 Ariz. App. 400, 402, 539 P.2d 514, 516 (1975) (emphasis omitted). We specifically held that “a real estate agent may sue to recover compensation due under a real estate employment agreement only if there is a written agreement that complies with both A.R.S. § 44-101(7) and 32-2151.02(A).” *Young*, 230 Ariz. 433, ¶ 24, 286 P.3d at 522. Here, as in *Young*, Register sought a commission from Hickman without a written agreement requiring such payment.

¶6 Register represents herself in this appeal and has neither cited *Young* nor provided any relevant legal authority suggesting that case does not apply and should not be followed here. See *State v. Hickman*, 205 Ariz. 192, ¶ 37, 68 P.3d 418, 426 (2003) (departure from precedent requires “special justification”), quoting *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). An appellant carries the burden of showing that a trial court erred. *Guirey, Srnka & Arnold, Architects v. City of Phoenix*, 9 Ariz. App. 70, 71, 449 P.2d 306, 307 (1969). Litigants who choose to represent themselves are held to the same standards as attorneys in terms of complying with procedural rules. *In re Marriage of Williams*, 219 Ariz. 546, ¶ 13, 200 P.3d 1043, 1046 (App. 2008). Under Rule 13(a)(7)(A), Ariz. R. Civ. App. P., an opening brief must develop an argument with supporting legal

REGISTER v. HICKMAN  
Decision of the Court

citations and appropriate references to the record on appeal. The failure to comply with this rule can result in waiver on appeal. *Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62, 211 P.3d 1272, 1289 (App. 2009).

¶7 Register's opening brief fails to establish that the trial court erred in applying *Young*. She first suggests that her claims are not subject to the statute of frauds because they sound in tort, not contract. Yet "Arizona places 'strict requirements' on real estate professionals who seek to recover commissions." *Young*, 230 Ariz. 433, ¶ 13, 286 P.3d at 521, quoting *Olson v. Neale*, 116 Ariz. 522, 524, 570 P.2d 209, 211 (App. 1977). Our case law generally prohibits "backdoor means of circumventing the statute of frauds." *Gibson v. W.D. Parker Trust*, 22 Ariz. App. 342, 345, 527 P.2d 301, 304 (1974). Conclusory assertions in an appellate brief do not constitute a properly developed legal argument. See *Lohmeier v. Hammer*, 214 Ariz. 57, n.5, 148 P.3d 101, 108 n.5 (App. 2006); *In re \$26,980 U.S. Currency*, 199 Ariz. 291, ¶ 28, 18 P.3d 85, 93 (App. 2000). Hence, in the absence of any legal authority supporting Register's contentions, we will not further address the applicability of the statute of frauds.

¶8 We likewise need not address Register's bare assertion that the trial court "exceeded its jurisdiction" in granting judgment on the pleadings because Hickman did not file an answer to the complaint. Not every legal error is a jurisdictional error. *State v. Espinoza*, 229 Ariz. 421, ¶ 19, 276 P.3d 55, 59 (App. 2012). Furthermore, it is not incumbent on this court to develop an appellant's argument and discharge her burden on appeal. See *Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143, 750 P.2d 898, 901 (App. 1987).

¶9 As she did below, Register also contends her action fell within the statute of frauds because the sellers' listing agreement necessarily expired before the passage of one year, thereby satisfying § 44-101(5). This argument overlooks that § 44-101(5) is not the only statute of frauds. Indeed, this particular subsection was not the basis of the trial court's decision. We therefore have no basis for disturbing the court's implicit conclusion that Register needed a signed, written agreement with Hickman in order to collect from him a portion of his commission. See §§ 32-2151.02(A)(4) (requiring

REGISTER v. HICKMAN  
Decision of the Court

signature “by all parties to the agreement”), 44-101(7) (prohibiting action for recovery of real estate commission absent written document “signed by the party to be charged”).

¶10 Register further claims the trial court erred in awarding attorney fees because they were not properly requested below. “Because a trial court and opposing counsel should be afforded the opportunity to correct any asserted defects before error may be raised on appeal, . . . errors not raised in the trial court cannot be raised on appeal.” *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994); accord *Payne v. Payne*, 12 Ariz. App. 434, 435, 471 P.2d 319, 320 (1970) (noting “party must timely present h[er] legal theories to the trial court”). Rule 13(a)(7)(B) requires an appellant to provide citations to the record showing that an objection was presented to, and ruled on by, the trial court. Here, absent a showing that Register raised the same objection she now urges on appeal, we find the issue waived. See *Spillios v. Green*, 137 Ariz. 443, 447, 671 P.2d 421, 425 (App. 1983).

**Disposition**

¶11 For the foregoing reasons, we affirm the judgment. We deny Hickman’s request for attorney fees on appeal because he has failed to cite a valid basis for such an award. See Ariz. R. Civ. App. P. 21(a)(2).